

The second ground of opposition consists of alleged errors of the commissioners in estimating and assessing the value of the property of the opponents taken and assessed for the proposed new street.

1. The third section of the act of 1833 requires that the commissioners should be competent to write or serve in the District Court. It is objected that John A. is one of the commissioners.

Although he possesses all the qualifications of one of the commissioners, yet he is not a resident of the parish of Orleans, on the ground that he resides in the parish of Jefferson, within the jurisdiction of the Court of the First District, and not in the parish of Orleans, where the sessions of the court are held.

We are of opinion that the objection is not well founded, and that although the sessions of the court are held in the parish of Orleans, yet the sessions of the court are held in the parish of Orleans, and not in the parish of Jefferson.

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1. The plaintiff may join an action to annul a contract or transfer of property made by his debtor to another person, to cover it from creditors, to the principal demand against such debtor.

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2. Where two of the original plaintiffs in a joint action, die after judgment and a rule is taken by the other seven on the surety in the bail bond, to show cause why he should not pay their share of the judgment: *held*, that the judgment severed their joint interest, and that each has a right to recover his virile share from the surety..... *Opothlarholer et al. vs. Gardiner*, 512

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4. In a possessory action, in order to bring the case within the doctrine recognized in the decision of *Ellis vs. Prevost*, 13 Louisiana Reports, 230, the plaintiff must show, not only acts of limited and restricted possession, but also to indicate by legal evidence, the extent and full limits of the property of which he claims the possession. *McDonough vs. Childress et al.*, 556

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1. The assignment of *part of a debt*, will be enforced in the Courts of Chancery, and by the courts of this state, when the obligation resulting from the assignment of a part of the debt. may be implied from the custom of trade, or course of business between the parties.

Jackson vs. Tiernan et al., 485

ATTACHMENT.

1. Where it is shown, that the proceeds of certain cotton has been passed to the credit of the intervenors on the books of the defendants, the cotton will be liable to the attaching creditors of the latter.

Carman et al. vs. Anderson et al. : A. & J., Intervenor, 135

2. Where the plaintiff's debtor placed drafts in the hands of an agent for collection, with orders to collect and remit the proceeds to the plaintiff, and, in the mean time, another creditor attaches these funds in the hands of the agent : *Held*, that the attachment is good, and that the funds are liable to be attached by any creditor until placed beyond the reach of creditors by remittance.....*Wilson & Co. vs. Lizardi et al.*, 255

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St. John et al. vs. Sanderson : Cochran, Intervenor, 346

4. The first attaching creditor will be allowed the full amount of his judgment, in preference to others who attach after him.

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8. An attachment can only have effect for the amount of the judgment obtained against the defendant, in which it issued..... *ib.*
9. Attaching creditors should be paid in the order of dates of their attachments, and not *pro rata*..... *ib.*

ATTORNEY OF ABSENT HEIRS.

1. The attorney of absent heirs cannot institute a suit against the testamentary executor and legatees, to annul the will of the testator. His functions are essentially conservatory.

Mix's Absent Heirs vs. Mix's Executor and Legatees, 66

2. The attorney of absent heirs may, and perhaps generally does, represent the legatees named in the will, when any of them are absent; hence, the absurdity of his suing to annul the will, and, with it, their legacies..... *ib.*
3. The attorney of absent heirs cannot interfere with the person or share of an estate coming to a minor heir, while he is under the direction and care of a tutor..... *Percy, tutor &c. vs. Provan's Executor et al.*, 69
4. It is not necessary, in all cases, to appoint an attorney of absent heirs, and a curator to the vacant estate, contradictorily with whom the heir must claim the estate; and when it is shown the deceased had no forced heirs, the nearest collateral relation, as a brother, applying, will be entitled to the succession..... *Addison vs. New-Orleans Savings Bank*, 528
5. The absence of heirs will not be presumed in all cases of an intestate succession, and less so in a case where the contrary is shown..... *ib.*

ATTORNEY AT LAW.

1. An attorney at law cannot be required to disclose communications of a deceased client relative to dispositions in his will. There is no distinction between the case where a party continues to be the client of the attorney, and where he is dead.

Hart vs. Thompson's Executor and Legatees, 88

3. The court should not receive evidence of the value of professional services, as an attorney at law, but pass on them as an expert; the services being rendered under the eye of the court.

Baldwin's Executor vs. Carleton, 394

3. The authority of an agent of the plaintiffs, and of the attorneys in prosecuting the original suit, is put to rest by the judgment, and cannot be questioned in a proceeding against the bail.

Opothlacholer et al. vs. Gardiner, 512

4. When it appears that the defendant is a non-resident, but has an attorney of record, service on the attorney of notice of judgment, is sufficient.....*Opothlarholer et al., vs. Gardiner.* 512
5. It is not necessary for the sheriff to call on the attorney, when the defendant is absent, to point out property; and the return of "no property after demand of the plaintiff's attorney," was sufficient to authorize a *capias ad satisfaciendum* to issue..... *ib.*

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1. Where an auditor has been appointed, when he commences his proceedings, the first act is to take the oath, which must be in writing at the foot of the order of court, and annexed to his report.
Locke & Co. vs. Dakin & Dahin, 423
2. In all cases, whether the auditors have been specially requested or not, by the party, they must be sworn, and must give notice to the adverse party. *ib.*
3. The circumstance, that an auditor made his report without taking the oath, but swore to it before homologation, is insufficient to cure the defect. Had the auditor taken his oath at any time before completing his business, it would be sufficient..... *ib.*

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1. A protest signed by the notary in the presence of two witnesses, is sufficient, and is properly admitted in evidence.
Bank of Louisiana vs. Watson, 38
2. Notices of protest, deposited in the principal post office where the defendant receives his letters and papers, although there is another in the same parish nearer to him, is sufficient..... *ib.*
3. The statute of 1827 in relation to protests and notices, introduced few, if any, rules derogatory to the commercial law. It only provides new modes of proof of demand, and notice to the parties to notes and bills of exchange, leaving their effect to be determined by the commercial law.
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4. The rules laid down in the Code of Practice in relation to the service of citations, have no application to the service of notices of protest of bills and notes.....*Jones vs. Mansker et al.*, 51
5. A notice of protest left at the defendant's store with his clerk, or on his desk, or thrust under his door during business hours, is sufficient to bind him as endorser..... *ib.*
6. Notice of protest "delivered at the store of the defendant," without stating with whom, is sufficient to bind him as endorser.
Bank of Louisiana vs. Mansker et al., 115
7. Notice of protest "left at the office of the defendant, he not being in," is sufficient to bind him as endorser..... *Commercial Bank vs. Gove*, 113
8. Where an endorser at maturity of the note, writes on its back, "I herby waive the formality of protest, and hold myself equally bound," he will not be entitled to any further notice of its dishonor.....*Carmena vs. Mix*, 165
9. The holder of a note who endorses it in blank, gets it discounted and takes it up at maturity, is subrogated to the rights of the Bank against the maker.....*Millaudon vs. Colla*, 213
10. Payment to a Bank, like that to an individual, may be proved by parole..... *ib.*
11. The law is well settled, that a presentment for payment at the place where a note is made payable, must be made within the business hours, according to the usages of the place of payment.....*Wallace et al. vs Gwin*, 223
12. So, where a note was made payable at the Mechanics' & Traders' Bank, but was deposited in the Canal Bank for collection, and not presented during banking hours, and no attempt to demand payment until after the usual banking hours: *Held*, that the endorser was thereby discharged..... *ib.*
13. The plea of the general issue dispenses with proof of the signature of the maker, but not of the payee and first endorser.
Florance vs. M'Farlane, 231
14. In an action against the maker of a note, payable at a particular place, it is necessary to show *presentment and demand* at the place of payment, to entitle the holder to recover.
Hamer et al vs. Johnson; Arcueil et al., garnishees, 242
15. The Supreme Court of the United States, (*Wallace vs. M'Connell*, 13 *Peters*, 136) held, that it is not necessary to allege and prove a demand of payment, in an action against the maker of a note or acceptor of a bill; but that it is matter of defence, if the defendant can show he was ready at the place of payment, and offered to pay, to be pleaded and proved on his

part. This court adheres to its former and contrary decision, in the case of *Mellen vs. Croghan*, 3 *Martin, N. S.*, 423..... *ib.*

16. Where notes for the price of bank stock are renewed, and the plaintiff's agent endorses them, gets them discounted in bank, and at maturity takes them up for his principal, they return with a subrogation to all the privileges; and the original holder can recover and enforce his privilege on the stock, against the maker and his vendee.

Saul vs. Nicole's Ex'r. 246

17. When the plaintiff, by a special endorsement, parts with his interest to another, he must show title by a re-transfer. Mere possession of the note is not sufficient.....*Hart et al., vs. Windle*, 265

18. Where the endorsee is merely the agent of the plaintiff, the latter may sue in his own name: but such fact cannot be presumed; it must be alleged and proved..... *ib.*

19. So, in this case, it was alleged that the special endorsement of the plaintiff to G., was for the purpose of collection; but the fact was not proved, and the presumption resulting from possession, is insufficient..... *ib.*

20. Where a draft or order is not in its form negotiable, but if it is accepted payable to the order of the payee, it thereby becomes negotiable.

Crosby vs. Heath, 304

21. In negotiable instruments, the plea of error or mistake is not available against an endorsee..... *ib.*

22. The law is well settled, that notice of the non-payment or dishonor of a bill, given to the drawer by the acceptor, or any of the parties to it, is sufficient, and enures to the benefit of all the other parties.

Union Bank vs. Grimshaw, 321

23. Letters written on the day the bills become due, by the acceptor and addressed to the drawer, that they must go back protested, is sufficient notice to him..... *ib.*

24. So, if a note or bill is presented in the forenoon of the day it becomes due, and payment is refused, notice given in the afternoon is good. *ib.*

25. Part payment, or a promise to pay a bill or note, furnish grounds to infer presentment and notice of the dishonor or non-payment..... *ib.*

26. So, where the defendant as drawer of bills, after being advised by letter from the acceptor of their dishonor, acknowledged the debt and promised to pay the holder of the bills, by instalments on short time, it must be viewed either as an admission that the notices were good, or a waiver of them..... *ib.*

27. Possession of a negotiable note endorsed in blank, will authorize the holder to recover on it, when his authority is not specially denied, or the contrary shown.....*Cotton vs. Union Bank*, 369

28. Where the notary states that he "demanded payment of the note at the Bank therein specified," it is a sufficient legal demand. *Carlile vs. Holdship*, 275
29. The holder of a negotiable note endorsed in blank, who possesses it in good faith and gave for it a good consideration, cannot be affected by any failure of consideration, between the parties to it and the original endorser or holder. *Hagan vs. Caldwell et al.*, 380
30. A draft drawn, payable at no particular time, may be considered at sight; and an acceptance payable four months after, is contrary to its tenor, and releases the drawer. *Burthe vs. Donaldson et al.*, 382
31. Where an undertaker of work drew a draft on the owner, stating "it was for plastering done on his building," the acceptance was an admission that the drawer was entitled to a privilege under the code, which passed to the holder of the draft. *ib.*
32. Where a bank receives a bill of exchange for collection, and fails to demand payment of the acceptor or maker, and not using the ordinary diligence to secure the liability of the parties to it, they make it their own, and become liable to the owner for the amount. *Armington's Executor vs. Gas Bank*, 414
33. The maker of a note cannot object to the insufficiency of the protest, because, whether the note is protested or not, does not increase his liability. *Cain vs. Morris*, 494
34. Protest is necessary to give interest, when none is stipulated; and is good to prove a demand, if specially denied. *ib.*
35. All the parties who are endorsers on a note or bill after the payee, must be governed in their liabilities by the *lex mercatoria*. *Gasquet vs. Oakey*, 537
36. The law and responsibility is the same between endorsers, whether they received the note or bill successively from each other in the usual course of business, or are mere accommodation endorsers. *ib.*
37. So, where the second endorser takes up a note after protest, he has his recourse against the first endorser, for the amount he has paid. *ib.*
38. Notice of protest left at the domicile or dwelling-house of the endorser, is sufficient. *Coulon vs. Champlin, et al.*, 544
39. The official character or signature of a notary, or other public officer in another state, need not be proved in regard to protests of foreign bills. This is an exception to the general rule, that all signatures and official capacities of public officers in another state, must be proved as other facts. This exception is made in aid of commerce. *Waldron et al. vs. Turpin*, 552
40. But in cases of promissory notes in another state, the protests do not make proof of demand of payment, and are not admissible in evidence, unless

the signature and official capacity of the officer making them, is attested and proved..... *Waldron et al. vs. Turpin*, 552

41. By the commercial law, a notary is not required to make a protest of a note or inland bill, as it is not considered an official act; and if a notary makes it and is living, the protest is not received as evidence itself of a demand, even if his signature and capacity are undisputed..... *ib.*

BROKERS.

1. Brokers are not licensed in this state, and, as such, are unknown to our law..... *Nott and Co. vs. Papet et al.*, 306

2. Brokers in this state buy and sell paper on their own account and that of others, and must be responsible as all other individuals..... *ib.*

3. And where a broker failed to disclose his principal at the time of sale of a promissory note, or show who he was at the trial, he was considered as having sold the note on his own account, and held responsible for its genuineness. *ib.*

CLERKS.

1. The article 782, of the Code of Practice, authorizes clerks to appoint deputies, who are to take an oath before the court in which they act; but when the clerk of the District Court is *ex officio* clerk of the Parish Court, his deputy may swear in, in either court, and the law is satisfied.
Bank of Louisiana vs. Watson, 38

2. The deputy clerk is an officer known to the law, and the court will take notice of his acts, when signing himself as "deputy clerk," without using the name of his principal..... *ib.*

COMMISSIONERS FOR OPENING STREETS.

1. The act of 1832, for opening streets in New-Orleans, requires that the commissioners of estimate and assessment should be competent to serve as jurors in the District Court; but a privilege of exemption from serving on the jury, does not render a person incompetent to serve as a commissioner.
Heerman's Heirs vs. Municipality No. Two, 597

2. The assessment of commissioners, under the act of 1832, for opening and improving streets in New-Orleans, is of their peculiar province; and like the finding of a jury, or the report of experts, it should not be disturbed except for manifest error..... *ib.*

COMPENSATION.

1. A sum due the defendant by the husband, cannot be pleaded in compensation of the wife's demand in her own right.
Defau et uz. vs. Pelane, 273

CONTINUANCE.

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1. An affidavit for a continuance on account of the absence of a witness which does not state that his departure was unknown to the affiant, and that his testimony could not be had, is insufficient.

Bank of Orleans, vs. Whittemore, 276

CONTRACTS.

1. Under the Roman Law, no resolatory condition was implied in the contract of sale. If the *pactum commissarium* was not expressly stipulated, the vendor had no right to take back his property if the price was not paid; with such a stipulation, if the price was not paid at the appointed time, the sale was void..... *Canal Bank et al. vs. Copeland, 75*

2. Under the Louisiana law, the effect of the resolatory clause implied in all synallagmatic contracts is not to render the contract void *ipso facto*, but only voidable, on the demand of the party complaining..... *ib.*

3. Where the purchaser of a plantation and slaves, under mortgage for bank stock, stipulates that the seller may reserve certain slaves, and he (buyer) will put in others, and assumes her obligations to the bank, he cannot claim a rescission of the sale on an exception to her right to proceed against the plantation and slaves for the price, or damages in a direct action, on the ground, that she (the seller) has not transferred the bank stock; until he puts her in default, by showing a readiness and offer to perform, on his part, what by the contract he was first bound to do; or at least simultaneously, &c..... *Dawson vs. Duplantier, 289*

4. When no time is fixed by a contract, within which the mutual stipulations are to be performed, either party may claim an immediate performance, according to its terms, and in the mode pointed out by law for enforcing similar reciprocal engagements..... *ib.*

5. The same relief will be extended to an innocent party who has become responsible for the contracts of another, by accepting his drafts and giving him his credit, as to a surety, who even before payment, may demand to be indemnified by the principal debtor, when the latter is in a state of insolvency..... *St. John et al. vs. Sanderson: Cochran, Intervenor, 346*

6. A contract or agreement which has never been perfected, and not having been adhered to and signed by all the contemplated parties, is not binding on those who have signed..... *Faures vs. Coinçon, 436*

CORPORATIONS.

1. The banks retain the capacity to sue and stand in judgment, notwithstanding the suspension of specie payments by them for a longer period than that allowed by their charters..... *Union Bank vs. Macdonald, 25*

2. The third section of the act of the legislature, approved March 6, 1834, which authorizes the corporation of New-Orleans, to cause to be sold for

the account of whom it may concern, any objects or property whatever which encumber the levee, streets, &c., and are suffered to remain in these places for a longer time than the ordinances permit, is *unconstitutional*, and the owner may recover the value of the objects thus sold, from the corporation.....*Rost vs. Mayor et al.*, 129

3. The corporation possesses the power to abate nuisances, and of removing incumbrances from the levee, streets, &c. at the expense of the proprietor..... *ib.*

4. The liability of corporations is the same as natural persons, for the acts and neglect of their agents, when acting within the scope of their employment.....*Ware, f. m. c. vs. Barataria and Lafourche Canal Co.* 168

COURTS.

1. Suit was instituted for the whole amount of a policy of insurance, which the defendants had settled and paid, but the suit was instituted with the view to try a feigned case to see if the defendants were not entitled to retain nine hundred dollars, for brick taken from the old building to reconstruct the new houses: *Held*, that courts of justice will not entertain or act on a feigned case or suit, even with the consent of parties.

Kohn et al. vs. Louisiana Insurance Company, 86

2. Courts sit to administer justice in actual cases, and will not act on, or entertain feigned suits or cases, even with the consent of parties..... *ib.*

3. The rule of the Commercial Court authorizing either party, when the cause is at issue, to set it for trial on giving the opposite party three days notice, is not contrary to article 463 of the Code of Practice, requiring each suit to be called in its turn, and a day fixed for trial.

Green vs. Dakin & Dakin, 152

4. No evidence can be received in the Supreme Court, that a judgment, by consent, was entered up differently from the consent and agreement between the parties.....*Brand vs. Jones*, 449

5. The Probate Court can inquire into the validity of sales and titles to immoveable property, whenever the question arises collaterally in matters within its jurisdiction.

Badon's Heirs vs. Foucher et al. : H. Badon's Heirs, Intervenor, 455

6. In a contest about the right and title to property, between two sets of heirs claiming under different ancestors, and which is not a necessary incident to a partition, the Probate Court is without jurisdiction..... *ib.*

7. The courts of this state will enforce an equitable right arising in another state, when the remedy is sought here....*Jackson vs. Tiernan et al.*, 485

8. The assignment of a part of a debt will be enforced in the courts of chancery, and by the courts of this state, where the obligation resulting

from the assignment of a part of the debt may be implied from the custom of trade, or the course of business between the parties

Jackson vs. Tiernan et al 485

9. The Probate Court is without jurisdiction or authority to compel property of an estate, which has been alienated by a co-heir and in the possession of a third person, to be brought into partition among all the heirs. It cannot inquire into the validity of title to real property, which is held by a party who is not an heir.....*Kemp vs. Kemp et al.* 317

CURATORS.

1. Previous to the promulgation of the Louisiana Code and Code of Practice, the appointment of a *curator ad hoc* to an absentee was not authorized by law.....*State of Louisiana vs. Judge of the Parish Court*, 81

2. In an action of nullity, brought by the defendant therein to annul a judgment obtained against him as a citizen of this state, by *foreign creditors*, who never resided or owned property in Louisiana: *Held*, that the suit be sustained by the appointment of a *curator ad hoc* to the absentees..... *ib.*

3. Where a curator of an interdicted person is shown to have been regularly appointed, and *has acted*, and been recognized by the Court of Probates, in the exercise of his office, he will be presumed to have taken the necessary oath, although none is found in the record, and his acts will be deemed valid.....*Ball's Administratrix vs. Ball et al.*, 173

4. The oath of a curator is an important formality, not to be dispensed with; but when all the other proceedings had for the alienation of minors' or insane persons' property, have been conducted with the fidelity which an oath was intended to secure, purchasers will be protected under them, even if no oath be found... .. *ib.*

5. A provisional seizure is insufficient to bring an absent defendant into court; but when a *curator ad hoc* is appointed it is sufficient.

Derepas vs. Shallus, 371

6. Where the curator of a deceased plaintiff is made a party by order of court, after the *contestatio litis*, and is represented by counsel, the case is ready to proceed to trial, without any other delay or notice.

Carlile vs Holdship, 375

DAMAGES.

1. An action of damages for malicious prosecution and false imprisonment, should not be maintained without clear proof of *malice*, and the *absence* of probable cause of guilt.....*Maloney vs. Doane*, 278

2. Whether the defendant disclosed the ground, of his belief in his affidavit, charging the plaintiff with a criminal offence, is immaterial. In an action of damages for malicious prosecution, &c., he will be permitted to show his motives, and the absence of malice..... *ib.*

3. Legal interest is the only damages allowed for delay in the performance of an obligation to pay money, but cannot apply, or be taken as the measure of damages, when the obligation is destroyed by the dissolution of the contract, and in an action for the rescission of the sale.....*Derepas vs. Shallus*, 371

DONATION.

1. The universal legatee under a will, and a universal donee under a marriage contract, are, by mere operation of law, seized of the whole estate, and no demand whatever is necessary from the heirs at law.
Fowler et al. vs. Boyd, 562
2. So, where the husband and wife, in their marriage contract, made to each other mutual and reciprocal donations of the whole of each other's property, to vest in the survivor; on the death of the wife, the husband became the universal donee, and seized of her whole estate..... *ib.*

EVICITION.

1. When the vendee has been evicted by an outstanding mortgage, and claims damages from his vendor, parole evidence is admissible to show the amount of damages actually sustained; notwithstanding the vendee may have been in arrears of interest or rent, at the time of eviction.
Bissell et ux. vs. Erwin's Heirs, 94
2. Where the vendee sues for damages on account of eviction, evidence to show a putting in default by the vendor in demanding rent or interest due, is not admissible. It can have no influence on the claim for damages, after eviction..... *ib.*
3. When the eviction is admitted by the pleadings, the production in evidence of the writ or execution under which the sheriff acted, is sufficient, without the judgment under which it issued..... *ib.*
4. The increased value of the property, forms a part of the damages assessed on the warranty, in case of eviction; but such increase only as the parties could have had in contemplation at the time of the contract, will be taken into the account..... *ib.*

EVIDENCE.

1. Evidence of the repeated acknowledgments of the maker of a note that he would pay it, is admissible to prove its execution, when the subscribing witness is incompetent to testify, from his relationship to one of the parties.....*Lopez's Widow and Heirs vs. Berghel, f. w. c.*, 42
2. But where the defendant expressly alleges his signature to the note sued on, to be forged, evidence of his acknowledgment will not be admitted, under article 325, of the Code of Practice..... *ib.*

3. The testimony of a deceased witness taken in writing on a former trial, is admissible in a subsequent trial.

Lopez's Widow and Heirs vs. Berghel, f. w. c., 42

4. The writ of seizure or execution, and the officer's return thereon, may be given in evidence without the judgment, when that appears in the record, although introduced for another purpose.

Bissell et ux. vs. Erwin's Heirs, 94

5. The rejection of irrelevant evidence, which if admitted could not have influenced the decision in the case, cannot be complained of..... *ib.*

6. Evidence of the acts or acknowledgments of a nominal party to a suit, touching a modification or new promises in relation to the original contract or transaction in question, will not be admitted..... *ib.*

7. Payment to a bank, like that to an individual, may be proved by parole evidence..... *Millaudon vs. Colla, 213*

8. Parole evidence cannot be received to prove in substance that a sale of a slave had been rescinded, or that the former vendor resumed possession as owner..... *Emmerling vs. Beebe et al., 251*

9. In an action by the owner of a slave for his hire and detention, a receipt of a third person, to show that he had released the defendants from the cause of action set forth by plaintiff, is inadmissible in evidence, as an attempt to prove title to the slave by incompetent testimony..... *ib.*

10. Where the plea of forgery is put in, supported by the oath of the party, it requires much stronger evidence to authorize a recovery, than in the ordinary case of a general denial..... *Robinson vs. Arnet, 262*

11. So, where the defendant expressly averred on oath, that his signature to the note sued on was a forgery, proof by witnesses who did not see him sign the note, but who only express their belief of its genuineness, from its similarity to signatures which *they had seen*, is insufficient to support the verdict of a jury..... *ib.*

12. Parole evidence was properly rejected, of the husband's consent to lose three per cent. per month on a note due to, and the sole property of his wife..... *Defau et ux. vs. Pelane, 273*

13. Parole evidence is admissible to show that the description of a lot, in an act of sale, was made through error and accident, and that the lot actually sold, was different from *that* described in the deed.

Palangue vs. Guesnon, f. w. c., 311

14. Where payment of the second, instead of the *first* note is made in error, the mistake may be proved by witnesses, and the error corrected, without affecting the liability of any of the parties to the note.

Union Bank vs. Stidell, 314

15. No evidence can be received in the Supreme Court, that a judgment by consent was entered up, differently from the consent and agreement between the parties..... *Brand vs. Jones, 449*

16. Evidence of demand, and the right to claim interest, results from the protest and act of sale, when the price is for immoveable property.

Barker, to use of Atchafalaya Bank vs. Banks et al., 453

17. The court cannot receive as proper evidence, any document or fact which the judge *a quo* states in his written opinion and judgment, to have been proven. It must appear by proof in the record, independently of his opinion or statement.....*Childress vs. Allin et al., 500*

18. So, where the judgment of a Parish Court is offered in evidence in the District Court, and is omitted to be copied into the record, and attested by the clerk or officer of the court, but is only embodied in the judge's opinion, it is insufficient, and cannot be used as evidence on the appeal.... *ib.*

19. Parole evidence is good to prove facts and circumstances of possession, at a time when the plaintiff's title was unknown, and when the parties could not be suspected of making evidence for themselves.

Devall vs. Choppin et al., 566

20. It is historically known that the Spanish Government never contested the validity of grants made to the French officers, before the Spaniards took possession of the colony of Louisiana, in 1769..... *ib.*

EXECUTION.

1. The return of *nulla bona* as to one of two defendants against whom a writ of *fieri facias* has issued, and the writ being stayed as to the other, a separate *ca. sa.* cannot legally issue. The execution must conform to the judgment, which is the sole authority that warrants the process. There being but one judgment, there can be but one execution and satisfaction.

Blanchard vs. Zacharie, 541

2. So, where a judgment *in solido* is obtained against three defendants, and separate executions issue, but stayed as to one, and as to the other two defendants returned *nulla bona*, and *ca. sas.* are taken out against each of them separately, one of which is stayed, and the other proceeded against until he gave bond and security for the prison limits: *Held*, to be illegal, and the surety in the bond discharged; because the plaintiff cannot have, at the same time, a *ca. sa.* against one, a *fi. fa.* as to a second, and proceedings suspended in relation to a third..... *ib.*

EXECUTORS.

1. An executor cannot be purchaser of the property of the estate he administers, when sold at public auction by order of the Court of Probates. He cannot be buyer and seller.....*Baldwin's Executors vs. Carleton, 394*

2. So, an executor who is a professional man, and renders legal services to the estate he administers, is not entitled to any separate compensation, according to the practice in England..... *ib.*

3. When an executor receives money of the estate, from a co-executor, or applies it improperly to his own use, it is considered still as money in his hands, as executor, for which he is accountable, and it may be recovered in the Court of Probates.....*Baldwin's Executor vs. Carleton*, 394

EXECUTORY PROCEEDINGS.

1. An order of seizure and sale against a third possessor for a sum assumed, but the amount of which is left doubtful, will be set aside, and the party informed that his only remedy is by an ordinary suit.

Dupuy vs. Dashiell, 124

2. A supplemental petition for a new order of seizure and sale is admissible, if it do not alter the plaintiff's original demand, but is only a continuation of it, embracing instalments not due, when the first was filed.

Mader et ux. vs. Fox, 132

3. In computing the distance and notice of seizure to which the possessor of mortgaged property is entitled, when he lives more than twenty miles from the residence of the judge granting the order of seizure, the ordinary road used for travelling is to be taken, although there may be a shorter one but seldom travelled.....*Woodward vs. Dashiell*, 184

4. The want of amicable demand is not sufficient ground to enjoin proceedings on an order of seizure and sale..... *ib.*

5. Where the third possessor assumes to pay the original vendor, he becomes the immediate debtor of the latter, who may proceed directly against him and the property, without notice to the original debtor..... *ib.*

6. The law requires a demand of thirty days of the original debtor and mortgagor, whether it be his own notes or those he assumed to pay, before issuing executory process against the third possessor.....*Valetti vs. Gurtie*, 188

7. It is not sufficient in the executory proceeding to show that the notes which the debtor or mortgagor assumed to pay, have been protested, but that the debtor himself was in default, thirty days before proceeding against the third possessor..... *ib.*

8. In an opposition arresting an order of seizure and sale, the issue is, as to the rights of the plaintiff, to proceed with his order of seizure, and not as respects the distribution of the proceeds of the property when sold; and especially among parties not before the court.

Hozey, sheriff etc. vs. McDougal et al., 353

9. In the executory process, no copy of the petition is required to be served on the defendant. A simple notice is necessary.

Exchange and Banking Company vs. Walden, 431

10. The article 739 of the Code of Practice points out the only reasons for which the sale, by the executory process, of mortgaged property, may be arrested..... *ib.*

11. Where the vendee and endorsers on notes secured by mortgage, are parties to the act of sale, it is not necessary that it be expressed therein, that they endorsed the notes, to enable the vendor to proceed by the executory process..... *Barker, to use of Atchafalaya Bank vs. Banks et al*, 453
12. In the executory proceedings on an act of sale containing the pact *de non alienando*, against mortgaged property in the hands of the last vendee, in which *no notice* is required, the latter is not bound to call his vendor in warranty..... *Carter vs. Caldwell*, 471

FRAUD.

1. A party suffering from the fraud of another, is entitled to relief; and where fraud would vitiate a sale of goods as between the original parties, a third party, on whose credit they were purchased and assumed payment, should not be made the victim of the fraudulent acts of the purchaser.
St. John et al. vs. Sanderson; Cochran, Intervenor, 346
2. In questions of fraud which are particularly the province of a jury, their verdict must be conclusive, unless clearly against the evidence.
Passebon vs. His Creditors, 438

GARNISHEES.

1. A garnishee cannot withhold funds claimed by intervenors, whose claim is dismissed and pending on appeal. It does not suspend the execution of the plaintiff's judgment against the defendant and original debtor, in which the funds were attached.
Carman et al. vs. Anderson et al.; Bogart garnishee, 136
2. When judgment has been rendered against the defendant, proceedings may be immediately had against the garnishees to pay over the funds or effects even before final judgment is signed.
Burke, Watt & Co. vs. Taylor; N. & E. Ford & Co., garnishees, 236
3. If the answers of garnishees state facts which the plaintiffs attempt to disprove, it is a proper case for a jury; but when the question is entirely one of law, relating to the sufficiency of the answers and the legal inferences deducible from them, the court will decide..... *ib.*
4. The promise of garnishees to pay the defendant's drafts or bills, can give them no privilege on any funds of his coming into their hands, over third persons or attaching creditors, who seize them before actual payment; and if they subsequently pay them, they cannot plead compensation to the vested rights of attaching creditors..... *ib.*
5. Garnishees may show, when called on to pay, that the defendant sued as absent, was in fact dead, at or before the institution of suit, and that, consequently, a payment by the garnishees would not be valid.
Allard vs. De Brot; Merle & Co. garnishees, 253

HABEAS CORPUS.

1. No appeal lies from proceedings had on a writ of *habeas corpus* in a criminal case, or for detention in disobedience to police regulations, and the like cases.....*State of Louisiana vs. Judge of Commercial Court*, 192
2. Civil cases are essentially those in which the defendant, or party against whom relief is sought by *habeas corpus*, is a natural person, or corporation other than the State..... *ib.*

HEIRS.

1. Heirs who are of age, and parties to a provisional partition, cannot complain: but minors and co-heirs not made parties, are not concluded, and their portions in a final partition, ought to be made up to them, according to the principles of equity.....*Kemp vs. Kemp et al.*, 517
2. The proceedings in the Probate Court, where the succession of the deceased was administered, recognizing the heir, together with the testimony of witnesses well acquainted with the family, are sufficient to authorize the heir to sue and maintain an action in his own name, for debts owing the succession.....*Addison vs. New-Orleans Savings Bank*, 527
3. The lawful heir inherits the succession from the moment it is opened, and this right is acquired by the operation of law alone, before he has taken any steps to put himself in possession..... *ib.*
4. One of the effects of the right of the heir to a succession, is to authorize him to institute all the actions which the deceased had a right to, and to prosecute those already commenced..... *ib.*
5. The absence of heirs will not be *presumed* in all cases of an intestate succession, and less so in a case where the contrary is shown..... *ib.*

HUSBAND AND WIFE.

1. Where the wife claims a separation from bed and board, on the ground of repeated acts of ill treatment and cruelty by her husband, which is supported by evidence, and there is no hope of living in peace, she will be entitled to relief.....*Headen vs. Headen*, 61
2. The act of the wife *retracting* her renunciation of her right of mortgage on her husband's property, must be made contradictorily with the creditor in whose favor she has renounced; so far, at least, that he should be notified of the passing the act of *retraction*....*Landry vs. Segond*, 154
3. Without notice to the creditors of the passage of the *act of retraction of the renunciation* of the wife, it will not interrupt the prescription of forty days within which it must be passed, under the act of 27th March, 1835.... *ib.*

IMPRISONMENT FOR DEBT.

1. The imprisonment of the debtor at the instance of a creditor, on a charge of fraud under the 10th and 11th sections of the act of March 20, 1840, abolishing imprisonment for debt, is essentially a civil suit by creditors against their debtor, to prevent the abstraction of his property, and in which an appeal lies to the Supreme Court.

State of Louisiana vs. Judge of the Parish Court, 531

INJUNCTION.

1. The act of 1831, section 3, allowing interest and damages on the dissolution of an injunction, does not apply to an opposition and injunction, to stay an order of seizure and sale.....*Dashiell vs. Lesassier,* 101

2. The plaintiff, in an opposition and injunction against an order of seizure and sale, may *discontinue* his suit without being required to pay either special or other damages, as it is only incidental to the hypothecary action, and he gives no security bond..... *ib.*

3. An injunction will not be dissolved, when the party is immediately entitled to a new one.....*Woodward vs. Dashiell,* 184

4. So, where an injunction was properly obtained, but it became necessary that it should be dissolved, no damages should be allowed..... *ib.*

5. A judgment by default cannot be taken by the plaintiff, in an opposition and injunction to an order of seizure and sale. No answer is required: a rule taken by the adverse party to dissolve the injunction, is equivalent to an answer, and the injunction may be tried summarily.

Dawson vs. Duplantier, 289

6. The trial of a rule taken to set aside and dissolve an opposition and injunction staying executory proceedings, is a trial on the merits, in which the plaintiff therein is called on to support the grounds of his opposition by evidence..... *ib.*

7. Want of amicable demand, does not authorize an injunction to prevent or delay the payment of a debt.

Exchange and Banking Co. vs. Walden. 431

INTEREST.

1. A party cannot recover back usurious interest or discount which he has voluntarily paid, either by a direct action or exception.

Merchants' Bank vs. Gove, 378

INTERROGATORIES.

1. Where a firm is interrogated on facts and articles, and one of the partners answers categorically, it is sufficient, unless each of the partners have been expressly called on to answer.....*Tiernan et al vs. Nee,* 119

2. The right of being present when interrogatories are answered, is secured only to the party who requires his adversary to answer in open court.....*Tiernan et al. vs. Noe*, 119

3. Where the plaintiff's attorney consented that the facts set forth in certain interrogatories propounded to them by the defendants, touching the ownership of the notes sued on, should be taken for granted, in order to prevent delay in the trial, the admission or confession cannot be recalled or disregarded, and the adverse party may avail himself of it after judgment.

Shipman & Ayres, vs. Haynes et al., 363

JUDGMENT.

1. Where the plaintiffs discontinue their suit, and afterwards revive or renew it on a rule to show cause, served on the adverse party and obtain judgment, which, although not appealed from, it is insufficient on which to found an action against a third possessor..*Gilbert et al vs. Nephler & Boyle*, 59

2. When a judgment is relied on as the only evidence of a debt, for which the property of a third possessor is attacked, it is but fair, and he has the right to open it, and inquire into the manner in which it has been obtained..... *ib.*

3. Where judgment, set up as the basis of an action against third persons, is attacked as fraudulent and collusive, it devolves on the party offering it, to prove his debt or demand by legal evidence..... *ib.*

4. The amount of a judgment having been paid, the defendant therein took an appeal, and had it reversed: *Held*, he should recover back the sum paid, on showing these facts.....*Mooney vs. Corcoran*, 46

5. Where a party claimed title to a piece of land, or a sum of money for work and labor done on it, and propounded interrogatories to his adversary to establish his claim, the answers to which negatived title, but left the money demand doubtful, and the judge found a less sum than that claimed, judgment thereon was not disturbed.....*Whitehead vs. Albriton*, 20

6. Where judgment by consent was entered up for a thousand dollars less than the amount of the note sued on, this court altered the judgment to the true sum, without it being specified or asked in the petition, when it appeared from the notes annexed.....*Brumfield vs. Mortee's Adm'rs.*, 116

7. Where the evidence is contrary to the judgment appealed from, it will be reversed, and such a one rendered as is supported by proof in the record.....*M'Coy's Executors vs. Byrne*, 366

8. No evidence can be received in the Supreme Court, that a judgment by consent, was entered up differently from the consent and agreement between the parties.....*Brand vs. Jones*, 449

9. A judgment of the inferior court cannot be corrected and amended in the Supreme Court, even by consent.....*Brand vs. Jones*, 449
10. Where a case presents merely a question of fact, the judge *a quo*, who heard the witnesses, and saw the manner they testified, is more competent to judge of the degree of credibility to be given to their testimony, than this court, and his judgment in doubtful cases should be affirmed.....*Goult & Lambert vs. Vidal et al.*, 479
11. A judgment which is reversed by the Supreme Court and remanded for a trial *de novo*, does not settle the rights of the parties, and form *res judicata*.....*Jackson vs. Tiernan et al.*, 485
12. The premature signing of judgment, as between the parties, is not assignable as error.....*Opothlarholer et al. vs. Gardiner*, 512
13. Where two of the original plaintiffs in a *joint action*, died after judgment, and a rule taken by the others on the surety in the bail bond to show cause why he should not pay their joint share of the judgment: *Held*, that the judgment severed their *joint interest*, and that each has a right to recover his *virile* share from the surety..... *ib.*

JURISDICTION.

1. The courts of general jurisdiction are the proper tribunals to take cognizance of partitions of partnership property, either in kind or by licitation, even if some of the members of firms composing the partnership are dead, and their estates in the hands of executors or administrators.
Gordon et al. vs. Dick et al., 33
2. The Parish Court of New-Orleans has concurrent jurisdiction with the First District Court, in all cases within the limits of said parish, and which extends to actions for partition of property held in common, even if any or all the parties defendants be minors, or persons residing without the limits of the state..... *ib.*
3. The jurisdiction of the Probate Court, as defined in the Code of Practice, article 924, No. 14, is confined exclusively to partitions of successions, which are the peculiar objects of that court..... *ib.*
4. The Probate Court is without jurisdiction in an action against a third possessor of property sold by a tutor, when the object of the suit is to annul certain proceedings of that court releasing the general mortgage of the minor, and to subject the property to his claim, under his mortgage against the tutor..... *Lesassier vs. Lesassier et al.*, 55
5. The third possessor was no party to the probate proceedings sought to be annulled, and is not connected in any way with the acts of the tutor; nor has he done any act under the authority of the Court of Probates..... *ib.*

6. Courts of Probate have no jurisdiction against third possessors of property claimed as part of a succession, or under a mortgage against a tutor. If it were otherwise, defendants would be deprived of important means of defence, as fraud and collusion, and the trial by jury.

Lesassier vs. Lesassier et al. 55

7. The Court of Probates is *without* jurisdiction in an action on an appeal bond, or to try a rule against the surety therein, to render him liable for the judgment against his principal, although the *appeal was taken from that court*.....*Elkins' Heirs vs. Berry*, 358

8. Where heirs sue their co-heirs for a partition of property inherited from their common ancestor, in the Probate Court, and another set of heirs intervene and claim title to one-half of the property, under another and different ancestor, it involves questions of title, which must be brought before the courts of ordinary jurisdiction.

Badon's Heirs vs. Foucher et al. : H. Badon's Heirs, Interveners, 455

9. In a contest about the right and title to property between two sets of heirs claiming under different ancestors, and which is not a necessary incident to a partition, the Probate Court is without jurisdiction..... *ib.*

10. So where one set of heirs intervenes in the Probate Court, and claim title to half the property, in an action of partition between co-heirs inheriting from different ancestors, their petition of intervention will be dismissed for want of jurisdiction..... *ib.*

See Courts.

JURORS AND JURY.

1. When there is not a sufficient number of jurors, of the regular panel, in attendance, no matter from what cause, the court is authorized to call on bystanders. *Rondeau et al. vs. New-Orleans Improvement and Banking Co.*, 160

2. It is not good cause of challenge, that a juror has been summoned as a witness by either party. Jurors may be sworn to give evidence to their fellow-jurors..... *ib.*

3. A question of fraud is the peculiar province of the jury, and their verdict will not be disturbed when generally supported by the evidence.

Lambeth & Thompson vs. McMurray et al., 466

4. Judgments founded on the verdicts of juries, should never be brought before the Supreme Court without showing that an unsuccessful attempt has been made to obtain a new trial..... *ib.*

5. The verdict of the jury, in two trials, on mere questions of fact, when not clearly erroneous, will not be disturbed.....*Bernard vs. Pyburn*, 126

LAND TITLES.

1. The plaintiff claims a back concession of forty arpents, under a Spanish grant made in 1796, which runs into the defendant's tract front-

ing on Bayou Lafourche, and which was set off by the king's surveyor in notes and bounds, to certain settlers or colonists, without any regular grant, in 1779: *Held*, that this title is superior, and will hold the land against the Spanish grant of subsequent date.....*Landry vs. Martin et al.*, 1

2. The Spanish government recognizes verbal, as well as written grants to land; and a verbal grant, set off by the king's surveyor, passes all the right of the king to the domain, which cannot be subsequently granted by any of his governors..... *ib.*

3. After long and continued possession of land for nearly half a century, if a written title were necessary, the testimony of witnesses, after the loss of the archives and titles, will authorize the court to presume it..... *ib.*

4. Under the Spanish laws, a title to immoveable property may be shown by parole evidence.....*Same Case*, 10

LAWS.

1. The Civil Code of 1808, is a digest of the civil laws which were in force in Louisiana; and the re-enactment of them did not repeal the exceptions which limited their operation under the Spanish jurisprudence.

Verret et al. vs. Theriot, 106

2. So, the provision in article 227, page 258, of the old Code, that the surviving husband or wife who marries again, is forbidden to dispose of the property inherited from any of the deceased children of the first marriage, it being reserved to the children of that marriage, is taken from the 15th law of Toro..... *ib.*

3. The Spanish laws make an exception, that the surviving spouse, on marrying again, is not bound to reserve property of his deceased child of the first marriage for the other children of that marriage, when it has been acquired otherwise than by inheritance from the deceased parent. It becomes the absolute property of the survivor, if it has been purchased by the deceased child, from the moment of his death..... *ib.*

LEGATEE.

1. It is only from the forced heirs that a universal legatee is bound to demand the delivery of the property bequeathed to him; and if there be no such forced heirs, he is seized of right of the estate, and no demand is required.....*Fowler et al. vs. Boyd*, 562

2. So, the universal legatee under a will and a universal donee under a marriage contract, are by mere operation of law seized of the whole estate, and no demand whatever is necessary from the heirs at law..... *ib.*

MANDAMUS.

1. A *mandamus* will not be allowed to compel the judge of an inferior court to proceed in the trial of a cause forthwith, in which he has granted a continuance.....*State of Louisiana vs. Judge of the Parish Court*, 521
2. No appeal lies from the continuance of a cause, when there has been no final judgment..... *ib.*

MINORS.

1. A minor not emancipated, is not bound by mercantile contracts; nor by an engagement to enter into a partnership to carry on mercantile business.....*Willet vs. Tessier*, 13
2. Minors not emancipated are incapable, even with the authorization of their tutors, to make valid contracts in relation to business or mercantile transactions..... *ib.*
3. No consent of the father or tutor of a minor can remove the disabilities of minority. If it could, it would amount to a verbal emancipation, which is forbidden by law..... *ib.*

MORTGAGE AND PRIVILEGE.

1. A mortgage executed after the debtor has sworn to his schedule and applied for the benefit of the insolvent laws, is invalid, as a disguised attempt to give a preference to this creditor over others, after a sworn declaration of bankruptcy.....*Granet vs. His Creditors*, 122
2. Where a mortgage has been raised and cancelled under defective powers, by an attorney in fact, yet when actually cancelled under them, and subsequently released by the mortgagee, purchasers, in the mean time, of the property, will be protected.....*Ball's Administratrix vs. Ball et al.*, 173
3. Where a third possessor of mortgaged property, assumes, to pay the original vendor, he becomes the immediate debtor of the latter, who may waive his rights upon his vendee and proceed directly against the third possessor, without the notice required by the 69th article of the Code of Practice.....*Woodward vs. Dashiell*, 184
4. The renewal of notes given as evidence of an hypothecary or privileged debt, and an extension of time, is not *per se* a novation or extinguishment of the mortgage or privilege.....*Saul vs. Nicolet's Executors*, 246
5. The vendor has no privilege or lien on the furniture in the house when it is abandoned or let by his vendee, and he sues for a rescission of the sale. He can only claim his rents or fruits while the vendee had it in possession. The privilege grows out of the contract of lease, between landlord and tenant.....*Derepas vs. Shallus*, 371
6. Where a plasterer drew a draft on the owner, and stated in it, that "it was for plastering done on his building," the acceptance was an admission

that the drawer was entitled to a privilege, under article 3216, number 2, of the Louisiana Code, and which passed to the owner of the draft.

Burthe vs. Donaldson et al. 382

7. The purchaser of property previously mortgaged takes it subject to the balance due on such mortgage, whatever it may be, and retains this sum in his hands over and above the price he bids, to be paid to the rightful owner.....*Aling et al. vs. Beamis*, 385

8. A purchaser of property subject to a lien or privilege, is liable for the amount, and will be compelled to pay it, or give up the property.

Diggs vs. Green et al., 416

9. Where the evidence shows that the husband has received and converted to his own use the paraphernal property of his wife, in case of his insolvency, her heirs will have a legal mortgage, superior to that of other creditors, on his estate for its restitution.....*St. Martin vs. His Creditors*, 419

10. The article 739 of the Code of Practice points out the only reason for which the sale of mortgaged property, by the executory process can be arrested.....*Exchange and Banking Company vs. Walden*, 431

11. A mortgage for a principal sum, secures also the interest and costs in enforcing payment..... *ib.*

12. Taking a note in renewal of one secured by mortgage, is no novation when the first one is not given up..... *ib.*

13. The court cannot inquire into the terms and conditions on which property mortgaged by special privilege should be sold, which has been given up to the creditors by a concordat.....*Hodge vs. Whitall*, 506

14. If the property mortgaged and ordered to be sold to satisfy the judgment, is not sufficient, the defendant not being released by the concordat, will be personally bound to pay the balance due on the judgment, if there be any..... *ib.*

15. A creditor for supplies furnished a ship or vessel, has a privilege on the vessel for those furnished before her departure, if she has already made a voyage; but this voyage must be considered as made to another port, and a return to the port of departure before it is completed; otherwise this privilege could never be claimed or enforced.....*Blake vs. Bredall*, 545

16. Every claim against a vessel or steamboat depending on the last voyage, for wages, supplies, &c., for which the Code gives a privilege, will be allowed, when the services or supplies have been rendered or furnished within, and during the last sixty days before suit.....*Shirley vs. Fabrique*, 140

17. The purchaser of a specific, but undivided portion of a square of ground, for a particular sum or price, and gives his obligations with mortgage to secure payment, this mortgage only extends to his portion or interest, and cannot be enforced in the executory proceedings, for any of the obligations of his co-purchasers, although the sale and mortgage is all included in one and the same act.....*Walton & Kemp vs. Lizardi et al.*, 588

18. It was the intention of the parties to acquire such distinct portions of the property conveyed, as might have been made the subject of separate deeds of sale, and that although undivided, the square of ground cannot be said to have been purchased in common; and the payment of the notes of any one purchaser extinguishes the mortgage as to his part, and gives him an absolute and distinct title..... *Walton & Kemp vs. Lizardi et al.*, 588

19. Although a mortgage is indivisible, and prevails over each and every portion of the property, yet when the obligations given for a part only, of the whole property, are paid, the mortgage being but the accessory, is extinguished *ib.*

20. So, where co-purchasers of distinct and separate portions of undivided property, jointly mortgage it to secure payment of the price, yet when any one pays for his portion, the mortgage is extinguished as to that part. *ib.*

NOVATION.

1. The mere renewal of notes with an endorser, and making partial payments, does not operate a *novation*, nor deprive the vendor of his privilege on the thing sold, in the hands of the vendee.

Saul vs. Nicolet's Executor, 246

2. So the renewal of notes given as evidence of an hypothecary or privileged debt, and an extension of time, is not *per se* a novation, or extinguishment of the mortgage or privilege..... *ib.*

OBLIGATION.

1. The promise to pay a debt at certain periods, if a note given to the creditor for collection was *not collected*, is not absolute but conditional; and as the collection of the note would have extinguished the debtor's obligation, so if it has not been collected, through the fault of the creditor, the consequence must be the same..... *Moore et al. vs. Cochran*, 233

2. Where a note is given in consideration of the plaintiff's promise to have a certain tract of land laid off into town lots, and the share of each subscriber conveyed to him, it is a contract creating reciprocal obligations, and the plaintiff is bound to convey, or show his readiness and ability to perform his part of the contract; and failing to do so, cannot recover on the note..... *Brashear vs. M-Masters et al.* 282

3. In contracts containing reciprocal obligations, the party bound to convey must convey, or show his readiness and ability to perform his part of the contract, before he can compel the other to pay the price..... *ib.*

OFFICERS.

1. A sheriff, who is the nearest relation, and son of one of the parties, is not incompetent to act and execute process in the case. It is a pecuniary interest alone that renders him incompetent. *Dawson vs. Duplantier*, 289

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2. The signatures and official capacities of public officers, purporting to act as such in foreign countries, must be proved, *when contested*, in our courts, as other facts. There is an exception as to notaries or others protesting bills of exchange. *Waldron et al. vs. Turpin*, 552

3. The acts of an officer to whom a public duty has been assigned are *prima facie*, taken to be correct, and within his power and authority. *Devall vs. Choppin et al.*, 566

4. It is historically known that the Spanish government never contested the validity of grants made by the French officers, before the Spaniards took possession of the colony of Louisiana in 1769. *ib.*

PARENT AND CHILD.

1. The provision in the Civil Code of 1808, article 227, page 258, forbidding the surviving husband or wife who *marries again*, from disposing of the property of any deceased child of the *first* marriage, but requiring it to be held and *reserved* for the other children of that marriage, is taken from the 15th law of Toro. *Verret et al. vs. Theriot*, 106

2. The Spanish laws make an exception, that the surviving parent on marrying again, is *not bound to reserve* the property of his deceased child of the *first* marriage for the other children of that marriage, when it has been *acquired otherwise* than by inheritance from the deceased parent. It becomes the absolute property of the survivor, if it has been *purchased* by the deceased child, from the moment of his death. *ib.*

PARTITION.

1. Partial and provisional distributions of property among co-heirs do not amount to a final partition; is not conclusive on those not parties, and the property in possession of the co-heirs is liable to be brought into a final partition. *Kemp vs. Kemp et al.*, 517

2. The Probate Court is without authority to compel property of an estate which has been alienated by an heir, and in the possession of a third party, to be brought into partition, among all the heirs. *ib.*

3. Heirs who are of age, and parties to a provisional partition, cannot complain; but minors, and co-heirs not made parties, are not concluded; and their *portions* in a final partition ought to be made up to them according to the principles of equity. *ib.*

PARTNERSHIP.

1. The members of a firm doing business as carpenters, and signing the name of their firm to a note, are only liable *jointly*, and not jointly and severally. *Heath et al. vs. Howell & Johnson*, 138

2. The members of a firm doing business as architects, and signing notes

for the price of immoveable property purchased by them in the name of the firm, are only bound *jointly*, and not *in solido*.

Green vs. Dakin & Dakin, 152

3. Where partners carry on a rum distillery, and one of them, who is in the habit of buying molasses for the concern and drawing drafts on his co-partner, draws a draft for a quantity of molasses, which is delivered and used, and the co-partner refuses to accept it: *Held*, that they are both liable, and bound *in solido*, nevertheless.....*Pugh vs. Priestly et al.*, 287

4. An association for the purpose of carrying on "the cotton pressing business," is an ordinary partnership; and an acceptance by the firm, only binds each partner for his proportion of the debt.

McAuley vs. Barnes, 427

5. Where judgment is prayed *in solido*, against the members of a firm, and one of the defendants denies his liability *in solido*, his firm being only a particular, not a commercial partnership, he must show that both partners consented to the obligation, or that it was contracted for the benefit of the firm.....*Derbigny vs. Mondelli et al.* 496

6. So, where judgment is asked against the members of a firm *in solido*, and for *general relief*, and one of them denies his liability for the whole debt, on the ground that it is only a particular partnership debt, evidence of the consideration of the obligation will be admitted, to show his liability *in solido*, the debt having been contracted for his benefit..... *ib.*

7. Where a concordat was made by J. E. W., one of the members of the firm of W. J. & Co., and charged with the administration of the affairs of said firm, &c., of the one part, and the creditors of said firm, of the other, in which a full and entire acquittance and discharge, as well to the said J. E. W., as to the members of said firm, individually and jointly, of all claims, debts, and demands whatsoever," is granted: *Held*, that the parties of the second part acted only in the capacity of "creditors of the firm," and that J. E. W. was not thereby released from an individual debt, owing to an individual creditor, who was a party to the concordat.

Hodge vs. Whital, 503

PAYMENT.

1. Where payment of the second, instead of the first note, is made in error, the mistake may be proved or shown by witnesses, and the error corrected, without affecting the liability of any of the parties to the note.

Union Bank vs. Slidell, 314

2. The payment being made in error, did not extinguish the obligation evidenced by the note, nor the mortgage which was its accessory..... *ib.*

POSSESSION.

1. The possession of a usurper enures to the benefit of the real owner ; and his bad faith cannot in any manner destroy or impair the right of possession, previously held in good faith.....*Devall vs. Choppin et al.*, 581
2. But where the possession may have been obtained in bad faith ; or the possessor may have been guilty of fraud when he acquired his title, yet third persons not claiming under the same original title, or the party in whom it vested, cannot inquire into its defects or relative nullities. This can be done only by those who have suffered from his acts..... *ib.*
3. No relative nullities in titles or deeds, accompanied with possession, even those resulting from fraud, can be inquired into collaterally..... *ib.*

PRACTICE.

1. As soon as the ten days allowed for delay expire, after service of citation, if the court is in session, the plaintiffs may take judgment by default, if there is no answer filed.....*Carmena vs. Mix*, 165
2. This court will not travel out of a bill of exceptions to notice objections which were not made in the court below. Had they been suggested there, they might have been removed.....*Ball's Administratrix vs. Ball et al.*, 173
3. The plea of the general issue and averment, that certain goods described in the petition, were tendered and delivered, does not admit their value, as alleged by the plaintiffs, and dispense with proof of it.
M-Master & Hyde vs. Brander et al., 206
4. Without an answer filed or judgment by default, no reference or submission to arbitrators can be made in a cause ; and such a submission may be assigned for error.....*Perret & Gally vs. Keill & Co. et al.*, 209
5. When there is no *contestatio litis*, or judgment by default, all the subsequent proceedings are irregular and void..... *ib.*
6. In an action of damages against the masters and owners of two ships for collision, and injury of the plaintiff's vessel, when he had offered all his evidence, one of the defendants, (who severed in their pleas,) moved and obtained a judgment of non-suit, and the other was permitted to introduce evidence proving his own innocence, and showing that the conduct of the defendant obtaining the non-suit, was the remote cause of the collision and injury complained of.
Toulman et al., Owners of the Brig Hokomok, vs. Elliott et al., etc., etc., 226
7. It is within the discretion of the court to allow or cause a witness to be called and sworn after the evidence of both parties has been closed and the arguments progressed, if the court is of opinion more light and information is needed on the matter in contest..... *ib.*

8. A new trial is within the sound discretion of the court, which will not be interfered with unless there is manifest error.

Toulman et al., Owners of the Brig Hokomok vs. Elliott et al., etc. etc., 226

9. A non-suit legally obtained, the party cannot be deprived of it in the same suit. *ib.*

10. Where the judgment of the inferior court states, that "the plaintiff proved all his allegations," and there is no proof of the signature of the first endorser of the note, in the record, the case will be remanded for a new trial. *Florance vs. McFarlane*, 231

11. The plea of the general issue dispenses with proof of the signature of the maker of a note, but not that of the payee and first endorser. *ib.*

12. Where a special defence is set up, it may be considered a waiver of the plea of the general issue. *Bank of Orleans vs. Whittemore*, 276

13. The judge *a quo* possesses discretionary powers of enlarging a rule and postponing a trial, giving further time for hearing the parties; and when this discretionary power is exercised, this court will not interfere by granting a *mandamus* commanding him to proceed *instante*.

State vs. Judge of Parish Court, 284

14. Where it appears from the record, that complete justice has not been done between the parties, and the trial being by jury, the court will not render final judgment, but remand the case for a new trial.

Terrill vs. Bonnabel, 317

15. The defendants cannot avail themselves of a defence against their liability to pay a certain sum, on the ground that the plaintiff's agent who employed them, was indebted to them, when this matter is not specially pleaded. The plea of the general issue is not sufficient.

Cotton vs. Union Bank of Louisiana, 369

16. The defendant may bond his property, but the plaintiff is never allowed the possession of it. He can only demand that it be sold, if it be of a perishable nature. *Comstock et al. vs. Paie*, 481

17. A person suing as administrator may, if the evidence shows it, recover the sum claimed in his own right.

Childress, Administrator, &c. vs. Davis & Webb, 492

PREScription.

1. Where a party holds and possesses property honestly, and by virtue of a contract of a sale, regular in point of form, without notice of the plaintiff's claim, and having retained possession, publicly, without interruption, and in good faith, for more than *ten* years, he acquires a title by prescription. *Verret et al. vs. Theriot*, 106

2. In whatever place the defendant may reside, the prescription of five years runs in his favor even against minors, and persons interdicted.

Tyson vs. McGill, 145

3. A conditional offer by defendant, in a conversation with the plaintiff's counsel, "that he would pay the note if long time enough was given," does not amount to a new promise, so as to take the case out of prescription and entitle the plaintiff to recover.....*Tyson vs. McGill*, 145

4. Prescription is an exception which does not touch the merits; and when this exception is overruled, the party should be heard on the merits.
Lang vs. Kimball, 200

5. Where prescription is first pleaded in the Supreme Court, and it is necessary to remand the case for a new trial on this plea, the party for whose benefit it is, must pay the costs of the appeal.
Parmele & Baker vs. Johnston, 429

6. Prescription is interrupted by a suit in the United States Court sitting in another state.....*Jackson vs. Tiernan et al.*, 485

7. The plea of prescription should be explicit and special; so that the party against whom it is opposed may be put on his guard, in order to enable him to show that the prescription had been interrupted.
Blake vs. Bredall, 550

8. The possession of an usurper, or person under a defective *meine* conveyance, and who is evicted, will not interrupt prescription, as against the rightful owner or proprietor, when they both claim under the same original title.....*Devall vs. Choppin et al.*, 566

9. So, where the original possession was in good faith, although an intermediate possessor of the premises held in bad faith, the subsequent possessor in good faith can avail himself of the prescription applicable to such possession..... *ib.*

10. If the possession has commenced in good faith, and it is afterwards held in bad faith, that will not prevent the prescription, even if the possessor's title was fraudulent, and he knew another person had a better title. *ib.*

11. To support the long prescription of thirty years, possession only, without title or good faith, is necessary; but continuous and uninterrupted possession under a legal title, derived from the original grantee, with certainty in the object, and good faith in the first and subsequent possessors, will support the prescription of ten years..... *ib.*

12. Where the possession has not always been a *corporeal one*; but when it becomes necessary to complete a possession already begun, the civil possession will suffice. *ib.*

PRINCIPAL AND AGENT.

1. The liability of corporations, is the same as natural persons, for the acts and neglect of their agents, when acting within the scope of their employment.....*Ware f. m. c. vs. Barataria and Lafourche Canal Co.*, 169

2. Masters and employers are responsible for the damage occasioned by their servants and overseers, in the exercise of their functions; but this liability only extends to cases where the master or employer might have prevented the act which caused the damage, and did not.

Ware, f. m. c. vs. Barataria and Lafourche Canal Co., 169

3. So, where a lock-keeper, instead of attending to his duties, assaults and causes damage to a passenger, even under pretext that the latter has not paid his toll, he alone is responsible for the damage, and not his employers *ib.*

4. Where an agent is employed to buy a quantity of fish, in barrels, with discretionary powers to do the best he can in executing the order, and he procures fish which have passed inspection, but, in consequence of the barrels not retaining the brine, the greater part of the fish are spoiled on the arrival, and sold at great loss: *Held*, that this is not such a degree of negligence on the part of the agent as will authorize a recovery in damages..... *Forstall et al. vs. Fowle*, 299

5. A party to a contract, who denies that he acted as principal, must show that he made this known at the time of the contract, or allege and prove his agency at the trial..... *Nott & Co. vs. Papet et al.*, 306

PRIVILEGE.—SEE MORTGAGE AND PRIVILEGE.

PROOF.—SEE EVIDENCE.

RAIL-ROADS.

1. The Pontchartrain Rail-Road Company have the exclusive right and privilege, for twenty-five years from 1830, of constructing and using a rail-road from the city of New-Orleans to lake Pontchartrain.

Pontchartrain Rail-Road Company vs. Orleans Navigation Company, 404

2. The legislature possesses the power of granting exclusive rights and privileges as the reward of constructing rail-roads, in the same manner as congress may reward the discoverer of a new invention..... *ib.*

RECONVENTION.

1. A plea in reconvention, claiming damages for alleged injury done to the credit, &c. of the defendant, by suing him on his own notes, will be disallowed, as there is no connection between the two demands.

Union Bank vs. Macdonald, 25

2. A plea in compensation and reconvention setting up different matters, in no way connected with the plaintiff's demand, will be rejected.

Merchants' Bank vs. Gove, 378

REDHIBITION

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1. Where a slave died from a disease which was not incurable by its nature, nor had become so by the progress it had made at the time of the sale, and it is shown there was not that care and attention paid to the slave which the nature of his case required, no recovery of the price can be had in a redhibitory action or exception.

Serapurn, Syndic, &c. vs. Bousquet et al., 509

2. Where purchasers of a slave who died soon after the sale, are shown not to have acted as prudent men, and the loss of the slave may be attributed to their fault and neglect, they cannot avail themselves of redhibition to recover the price..... *ib.*

SALARY.

1. Where an engineer was employed by a cotton press by the year, at a fixed salary, and was discharged by the Company before the end of the year, without any other cause than that his services were no longer required, it was held that he is entitled to recover his salary for the whole term.....*Sherburne vs. Orleans Cotton Press*, 380

SALE.

1. Under the Roman law, no resolatory condition was implied in the contract of sale. If the *pactum commissarium* was not expressly stipulated, the vendor had no right to take back his property if the price was not paid; with such a stipulation, if the price was not paid at the appointed time, the sale was void.....*Canal Bank et al. vs. Copeland*, 75

2. If after the expiration of the stipulated time, the vendor sued for the price, he was considered as acknowledging the sale, and precluded from treating it as a nullity, or recovering back the property..... *ib.*

3. Under the law of Louisiana, the effect of the resolatory clause, implied in all synallagmatic contracts, is not to render the contract void *ipso facto*, but only voidable on the demand of the party complaining. There is, therefore, no inconsistency in suing for the rescission of the sale, after having claimed the price without success..... *ib.*

4. So, where the vendors sued the vendee for a specific compliance, with the terms of adjudication and payment of the price, and failed to enforce payment: *Held*, that an action for the rescission of the sale afterwards, was well brought..... *ib.*

5. The sale of a lot of ground in New-Orleans before the division of the city into municipalities, cannot be enforced or rescinded by the municipality in which the property is situated. This right can only be exercised by the mayor and commissioners of the sinking fund.

Municipality No. One vs. Brothers, 128



6. The registry act of congress passed in 1792, section 11, relating to ships and vessels, is only intended to regulate the national character of the vessel, and not to vest title in the new owner, by transfer and sale.

Begley vs. Morgan et al., 162

7. The transmission of a bill of sale to the purchaser, followed by its actual receipt, is a delivery to him at the moment of the transmission, which takes effect from its date..... *ib.*

8. In order to constitute a sale *per aversionem*, there must be certain limits or boundaries given, or a distinct and separate object described, as a field enclosed, or an island..... *Fisk vs. Fleming's Syndic*, 202

9. Where a tract of land is sold, with no boundaries or limits, except as fronting on the river, and described as having eight arpents front, forming about nine hundred and eighty superficial arpents, with an incomplete double concession, and it is afterwards ascertained to contain *less*, the purchaser must have the difference in price, in proportion to the diminution in quantity, refunded..... *ib.*

10. The purchaser at auction sales, looks for a description of the thing sold principally to the *procès verbal* of the auctioneer, or act of sale, rather than to title deeds delivered, furnishing evidence of title..... *ib.*

11. The admission of an agent, accepting a sale, that the title deeds to the property were furnished, does not amount to an exemption from warranty on the part of the vendor, as to the *quantity* of land set forth in the act of sale. *ib.*

12. The vendor cannot be aware that the property he sells was purchased on speculation, and with a view to immediate resale; and the vendee will not be allowed to set up as error in the motive, the fact that a tacit mortgage existed on the property, which was fraudulently concealed from him, in avoidance or rescission of the sale..... *Peirce vs. McMahon et al.*, 218

13. Where the tutor observes all the forms required by the act of 1830, authorizing a special mortgage to be substituted in lieu of the general one resulting from the tutorship, it frees the other property from all incumbrance; and a purchaser cannot set it up in avoidance of the sale.... *ib.*

14. Where an act of sale contains the clause *de non alienando*, any sale or transfer made in violation of it, is *ipso jure* void as respects the first vendor..... *Lawrence vs. Burthe et al.*, 267

15. The first vendor who sells with the clause *de non alienando*, may have the property on which the mortgage rests seized and sold, as if no change had taken place, and without notifying or making the vendee of his mortgagor a party..... *ib.*

16. Where an act of sale of mortgaged property is not recorded in the office of the Register of Conveyances, the original vendor has the right to act and proceed against the mortgaged property in the hands of the third possessor, as if it was still the property of the mortgagor.

Valetti vs. Alpuente, 269

17. Where a person buys an interest or share in a speculation of lands and town lots, which soon after suddenly decrease and fall greatly in value, from causes independent of any act or fault of the seller, he cannot resist payment of his notes or obligations, on the ground of failure of consideration.....*Slidell vs. McCoy's Executors*, 340

18. A hope or expectation of gain or profit in some enterprise or speculation, may form the object of a contract of sale..... *ib.*

19. On the dissolution of a sale the vendor is entitled, not only to take back the property, but to recover the fruits of the thing sold, during all the time the purchaser had it in possession, as the *rent* of a house and lot.

Derepas vs. Shallus, 371

20. The owner cannot interpose another person to bid in his property for him at a resale, so as to charge the *folle enchère*, or first purchaser, failing to comply with the terms of sale. He becomes himself the purchaser, and there is, in fact, no sale.....*Banks vs. Hyde*, 391

21. A vendor on his vendee's failing to comply, must take his choice, either to regain his property, or insist on the payment of the price, by instituting suit..... *ib.*

22. Where a third person purchases in property at sheriff's sale, under an agreement to reconvey it when funds are placed in his hands to reimburse the price, and release him from his liability, the original owner, or his representatives, cannot claim any right to the property, when the reimbursement has not been made or tendered.

Gravier's Curator vs. Lartet et al., 400

23. The signature of a party to an act of sale, is proof that he accepted it.....*Barker to use of Atchafalaya Bank vs. Banks et al.*, 453

24. When there is no written evidence of the auctioneer's authority to sell, or the owner's assent, and the *procès verbal* is made out three or four years afterwards, by the clerk of the auctioneer acting as his attorney in fact, it is sufficient to compel a compliance on the owner of the property.

Short vs. Knight, 483

25. A tender of the notes or money to a notary not designated to draw up the act of sale, is insufficient to compel the owner to make a title in compliance with an adjudication..... *ib.*

26. An act of sale passed before the commandant of Pointe Coupée, in 1774, in presence of two witnesses, wherein it is stated that the vendor did not sign, because he could not write, but it is mentioned that the title was delivered to the vendee, who took immediate possession of the land; such an act possesses the requisites of an authentic act under the Spanish law.

Devall vs. Choppin et al., 586

27. Parole sales of immoveables have been repeatedly recognized under the Spanish law; and at that remote period, the ordinary mark of a party to an authentic act of sale, was not required..... *ib.*

28. The acts and authority of a commandant, putting a settler in possession of a part of the public domain, by a written permission or grant, showing the extent of the land conceded, and accompanied by proof of occupancy, will be considered *prima facie* a good and sufficient title. The acts of an officer to whom a public duty has been assigned, are *prima facie* taken to be within his power and authority. *Devall vs. Choppin et al.*, 566

SHERIFF.

1. The sheriff is without authority to seize and sell immoveable property or slaves, under execution issuing by a justice of the peace, when the sum is less than fifty dollars. *Freeman, f. m. c. vs. Watts, Sheriff, &c.* 476

2. The fact of the defendant in the execution pointing out immoveable property, will not authorize the sheriff to sell, though it may to distrain, and hire or farm it out. *ib.*

SLAVES.

1. Where certain slaves in the hands of third persons, claim to be set free under the provisions of the will of their former master; his executor must be made a party. They have a right to stand in judgment for the purpose of compelling the executor to emancipate them in pursuance of the provisions of the will, but this must be done contradictorily with him.

Bob & Milly et al. vs. Nugent's syndic, 63

STOPPAGE IN TRANSITU.

1. The vendor has the right to stop the goods *in transitu* and before they reach their destination, or are delivered to his vendee, on the latter becoming insolvent. This right is paramount to any lien of a third party against the purchaser. *Hepp vs. Glover et al.*, 461

2. So, where goods on their passage are delivered to a consignee to be forwarded to the vendee, the vendor may claim the right of stoppage *in transitu*, while they are still in the hands of the agent or consignee. *ib.*

3. If goods are delivered into the possession of an agent or consignee, for the purpose of conveyance to the vendee, it is not such a constructive delivery, as will deprive the vendor or creditor, of his right of stoppage *in transitu*. *ib.*

SURETY.

1. The failure of one surety to demand a division at the trial does not authorize judgment *in solido* against him, but leaves him liable for the whole debt, in case of the insolvency of his co-sureties.

Atchafalaya Bank vs. Banks et al., 47

2. In case a surety demands the benefit of division at the trial, judgment must be for his *virile* share absolutely; it cannot be for a larger sum; but not having done so, he must remain *liable* in case of the future insolvency of his co-sureties.....*Atchafalaya Bank vs. Banks et al.*, 47

3 Where it appears that the *principal* is released from the obligation to account for certain moneys advanced to him, his sureties in the obligation will be discharged.....*Municipality No. Two vs. Gröning et al.*, 168

SYNDIC.

1. When a syndic has been legally appointed, no individual creditor can sue him for a debt, or interfere with his administration. A creditor may call him to account, and produce his bank book, &c. but he cannot be harassed by suits, and with alleged fears of mismanagement, &c.

Lillard vs. Tarbe, Syndic, 421

2. For malfeasance or gross negligence, a syndic may be removed from office in due course of law, and made liable for damages in his individual capacity..... *ib.*

3. The syndichip is a personal trust which cannot be delegated to another. The syndic may empower an agent to do a particular act, especially in a place distant from his domicile.....*Hughes vs. His Creditors*, 446

4. The court is not authorized to remove a syndic from office for mere absence from the state, no matter how short. It is not a momentary absence, but the neglect of the interests confided to him, that justify his removal..... *ib.*

5. The creditors should be the judges whether their interests require another syndic should be appointed; who, although under the supervision of the court, is properly the mandatory of the creditors..... *ib.*

TENDER.

1. An offer to deliver a box of goods after suit is commenced, without tendering the costs, does not possess the requisites of a legal tender.

M-Master & Hyde vs. Brander et al., 206

2. The plea of the general issue and averment that the goods described in the *petition*, were tendered and delivered, does not admit their *value*, as alleged by the plaintiff, and dispense with proof of it..... *ib.*

TUTOR.

1. Where the testator appointed his executor, also, tutor of his minor child, and directed that he keep the share of his child until he become of age, and the executor renounced the tutorship: *Held*, that he is bound to pay over the funds of the minor to the tutor afterwards appointed.

Percy, Tutor &c. vs. Provan's Executor et al., 69

2. The new tutor is bound to invest the funds as provided in the will, as the power of administering the estate of a minor, is exclusively given by law to the tutor.....*Percy, Tutor, &c. vs. Provan's Executor et al.*, 69
3. So, the attorney of absent heirs cannot interfere with the person or estate of a minor heir, while he is under the care and control of a tutor. *ib.*

USURY.

1. There is no usury in the sale of a note, although more than the highest rate of conventional interest was deducted, if the vendor does not endorse it, or is not a party to it.*Nott et al. vs. Papet et al.*, 306
2. It is of the essence of the contract of loan that he who receives money is bound to return it, and to which alone usury attaches..... *ib.*

VENDOR AND VENDEE.

1. The vendor of a lot of ground, situated in the limits of the Draining Company, is not responsible in any way to the purchaser, for the mortgage and claim which the company may have on the property sold for draining and enhancing the value : nor can the latter withhold the price or compel security to be given, as in case of a disturbance.
Municipality No. One vs. Leroy, 147
2. In the executory proceedings on an act of sale containing the pact *de non alienando* against mortgaged property, in the hands of the last vendee, in which no notice is required, the latter is not bound to call his vendor in warranty.....*Carter vs. Caldwell*, 471
3. The intermediate vendors sell with a knowledge of the first vendor's rights to go against the property, and the consequent danger of eviction of their vendees, against which they have guaranteed..... *ib.*
4. The intermediate vendor's obligation is to do, without notice, that which he would be bound to do if called in warranty, which is to pay the debt to the original vendor, or see it paid..... *ib.*
5. So, the last vendee when evicted, has a right to recover from his vendor the amount he has paid, who has the same rights against his vendor, *ib.*

VOYAGE.

1. A creditor for supplies furnished a ship or vessel, has a lien or privilege on the vessel for those furnished before her departure, if she has already made a voyage ; but this voyage must be considered as made to another port, and a return to the port of departure, before it is completed ; otherwise the privilege could never be claimed or enforced.....*Blake vs. Bredall*, 545
2. Claims against a vessel, ship or steam-boat, on the last voyage, for wages, supplies or materials furnished, &c., for which the Code gives a

privilege, will be allowed when the services, supplies, &c., have been rendered and furnished within and during the last sixty days before suit.

Shirley vs. Fabrique, 140

3. Sixty days will be taken as the duration of the last voyage, within which all privileged claims against vessels or steam-boats depending on this voyage, must be presented and enforced..... *ib.*

WAGES, AND WORK BY THE JOB.

1. Whether a contract be proved or not, a party will be allowed a reasonable compensation for his work done for the defendant, who was not benefited by it, without making compensation..... *Peterson vs. Short*, 159

2. Where it is shown that workmen refused to work by the job, the jury may allow their account for materials and work done, or so much as they think right, from all the circumstances and testimony adduced.

Varion et al. vs. Dupeyre, 260

3. When there is no formal delivery of work, if it is shown that the owner called for a detailed statement of what had been done, and said his negroes would finish the balance, it will be sufficient to charge him, and release the workman from a formal delivery..... *ib.*

4. Where an engineer of a cotton press was employed by the year at a fixed salary, and was discharged before the end of the year, without any other cause than that his services were no longer required by the company; it was held, that he is entitled to recover his salary for the whole term.

Sherburne vs. Orleans Cotton Press, 360

5. The engineer was entitled to receive his full salary as soon as he was discharged; and no condition could be afterwards imposed by his employer to return and perform his service for the remainder of the year..... *ib.*

WILL.

1. Where a nuncupative will, by public act, states, only, that the "testator declared, in the presence of witnesses, that the instrument contained his last will and testament, being dictated to the notary in the presence of the witnesses," is insufficient and null for informality, there being no mention of its having been dictated by the testator to, and written by the notary, as dictated..... *Verdun's Heirs vs. Verdun's Executor and Legatees*, 28

2. There must be five witnesses to a nuncupative will, under private signature, unless it is made in the country, and a greater number than three witnesses cannot be obtained, which must be made to appear..... *ib.*

3. A clause in a will or testament, which extends the powers of executors in their mere capacity as such, to enable them to keep the funds of the succession in their hands after they have become *functi officio*, ought to be considered as not written..... *Percy, tutor vs. Provan's Executor et al.*, 69



4. Provisions in a will appointing a tutor to the sole minor child, and also directing him to be sent out of the country, to his grand-parents, until he comes of age, cannot both be executed. If the minor be put under a tutor, he must remain here until majority..... *ib.*

5. Where it is shown that a testator was subject, from intemperance, to spells of insanity, which become general by long indulgence, but the witnesses to the will testify that he was sober and rational at the time of signing, he will be deemed competent to make a valid will.

Hart vs. Thompson's Executor and Legatees, 88

6. Sealing and closing a mystic will with wafers, and making the witnesses sign across and between the wafers on the envelope, is a sufficient sealing and enclosing within the meaning of the law, without the use or impress of a seal..... *ib.*

WITNESS.

1. A witness who swears to the best of his recollection, does not swear positively, and his testimony is insufficient to establish a positive fact, for want of certainty..... *Babcock et al. vs. Eldridge.* 149

2. Where the witnesses are of equal credibility, and differ in their testimony, the one having the best opportunity to know the facts testified to, will be entitled to the most weight..... *Forsyth vs. Despierris's Executors,* 215

3. The testimony of several witnesses, who swear positively to a transaction and discharge of the defendant from the debt sought to be enforced, will outweigh the testimony of a single witness to the contrary who was not present all the time of the transaction..... *Delafield et al. vs. Sherwood,* 271

